Similar constitutional provisions have been held not infringed by enactments forbidding the publication of accounts or advertisements of lotteries, *Hart* v. *People*, 26 Hun (N. Y.) 396; public speaking on Boston Common without a license, *Commonwealth* v. *Davis*, 162 Mass. 510; the use of profane language, *State* v. *Warren*, 113 N. C. 683; the publishing of an immoral newspaper, *In re Banks*, 56 Kans. 242. The authorities, however, are not entirely unanimous, for, on the other hand, an ordinance declaring a newspaper to be a public nuisance and making it a misdemeanor to sell a copy was held unconstitutional. *Ex parte Neill*, 32 Tex. Crim. Rep. 275. And an order to certain State officers not to participate in politics, or to make political speeches was held void. *Louthan* v. *Commonwealth*, 79 Va. 196. It seems a fair inference from the cases that the guaranty of freedom of speech and of the press is little more than a declaration of English common law principles. Indeed at the present time it is difficult to discover wherein our press, as compared with that of England, has greater liberty by reason of its constitutional protection.

But such was not the case when the "free speech" provisions were being adopted. Though nominally the English press was as free as it is to-day, actually it was far more restricted. For in spite of the abolition of the Star Chamber in 1641, the lapsing of the power to license the press in 1695, and the uniform declaration of English judges that every man was free to publish anything he chose without previous license, being liable merely for the abuse of this freedom, there were reported in Howell's State Trials alone fifty-three cases of libel and "seditious words" during the eighteenth century. Of these twenty-nine were heard between 1783 and 1794. This trend of affairs in England Americans must have seen with concern, and it seems a fair conclusion, therefore, that our forebears meant by the constitutional guaranties to preserve freedom of public discussion, and not merely freedom from censorship. See COOLEY, CONST. LAW, 301. Both Hamilton and Madison appear to have recognized this. The former defended the omission of a Bill of Rights from the Federal Constitution on the ground that the interpretation of such provisions must necessarily be so vague as to render them useless. See THE FEDERALIST, 631, 632. The latter, though he introduced the first ten amendments to the Constitution, did so not because he considered them necessary, but on the ground that many States had ratified that instrument only on the understanding that it should be thus amended. In fact, only the year previous he had written, "This essential branch of liberty [free press] is, perhaps, in more danger of being interrupted by local tumults, or the silent awe of a predominant party, than by any direct attacks of power." 1 WRITINGS OF JAMES MADISON, 195. Read in the light of the intention of the constitutional legislators, the subsequent decisions show that these provisions — found in so many of our constitutions — mean only that a man may freely speak and write what he chooses, so long as he does not thereby disturb private rights, the public peace, or attempt to subvert the government. See STORY, COM. ON CONST. § 1880.

VOLUNTARY PETITION IN BANKRUPTCY BY COMMITTEE OF A LUNATIC. — A decision recently handed down by a United States District Court holds that the Bankruptcy Act of 1898 gives no jurisdiction to entertain the petition of a lunatic, filed by his committee. *In the Matter of Eisenberg*,

27 N. Y. L. J. 1909.[1] The actual decision does not seem open to question, since the filing of the petition was not authorized by the court in lunacy, but the opinion appears to adopt the broad ground that a lunatic can never benefit by the present Bankruptcy Act on a petition filed by his committee. The chief reasons advanced were that a lunatic could not perform the acts required of a bankrupt under sec. 7 of the Act, and that his committee could not divest him of title to his property in order to pass it to a trustee in bankruptcy. This latter objection would seem to be obviated, provided the property were within the jurisdiction of the court, by the statute which permits the Supreme Court to direct the committee to convey a lunatic's real property for the payment of his debts, the improvement of his estate, or "on account of other peculiar circumstances." N. Y. LAWS 1896, c. 545, § 156. And, independent of statute, the power of a court in lunacy to direct conveyances of personal property seems equally broad. *Ellis* v. *Prop'rs of Essex, etc., Bridge*, 2 Pick. (Mass.) 243. See *In re Freer*, 22 Ch. D. 622. It would follow, therefore, that a lunatic's property may, in the discretion of the court having jurisdiction, be conveyed to a trustee in bankruptcy. Such appears to have been the view in a case under the Act of 1867, where a lunatic who, before insanity, had committed an act of bankruptcy, was adjudged a bankrupt on petition by creditors. *In re Pratt*, 2 Lowell (U. S. Dist. Ct.) 96.

The objection that a lunatic cannot perform the acts required of a bankrupt under sec. 7 of the Act, though more serious, is not fatal. The requirements are that the bankrupt furnish and swear to a schedule of his property, attend the first meeting of creditors, and undergo examination. In view of like provisions in the Act of 1867, a doubt was expressed in the case last cited whether, even after an adjudication in bankruptcy, a lunatic could be granted a discharge. It has, however, been held in similar cases that where a statute provides for an affidavit by the lunatic, such affidavit may be made by his next friend. *Ex parte Roberts*, 1 Mont. & Chitt. 653; *Ex parte May*, 2 Mont. Deac. & DeG. 381. The other acts required seem clearly to fall within the power of the court as guardian of the lunatic's property. N. Y. LAWS 1896, c. 545, § 127. They would, therefore, form no obstacle to an adjudication and discharge.

No actual decision of the question has been found. The cases most nearly in point have arisen in England. The statutory provisions there are very similar to those of the United States and of New York under which the principal case was decided, both as to the personal acts required of the bankrupt and as to the power of the court in lunacy to direct conveyances. 46 & 47 VICT. c. 52, secs. 16, 17, 24; 53 & 54 VICT. c. 5, secs. 117, 120. Nevertheless the prevailing opinion in England seems to be that a lunatic is entitled to the benefit of the bankruptcy law, although there is no decision squarely to that effect. See *Anon.*, 13 Ves. 590; *Ex parte Cahen*, 10 Ch. D. 183. The court in lunacy has gone so far as to authorize a lunatic's committee to consent to an adjudication in bankruptcy against him, and has also ordered such a committee to file a petition in bankruptcy on behalf of a lunatic. *In re Lee*, 23 Ch. D. 216; *In re James*, 12 Q. B. D. 332. Section 8 of the Act of 1898 provides that insanity supervening during bankruptcy proceedings shall not abate them. This express provision, it was inferred by the court in the principal case, impliedly excludes other cases

[1] When the case appears in the regular reports it will be noted among Recent Cases in a subsequent issue.

of insanity from the operation of the Act. But in view of the sweeping provisions of sec. 4, which allows "any person who owes debts except a corporation" to become a voluntary bankrupt, such construction seems a narrow one. It may be observed, too, that Congress, in enacting sec. 8, evidently contemplated in certain cases the performance by the lunatic's committee of the acts required of a bankrupt by sec. 7. The discussion of this question by the court, however, indicates what appears to be the real nature of the whole question. It is not primarily one of the power of the court in lunacy and of the committee, but of the objects and policy of the Bankruptcy Act. It would seem to be a sound policy to hold that lunacy does not prevent a man from receiving the benefits of a discharge in bankruptcy.

FOREIGN LAW IN DOMESTIC CONTRACTS. — Though contracts are made every day between citizens or subjects of different states, and questions under them are continually arising, the law that is to govern the determination of their validity is not yet well settled; in fact, the decisions are hopelessly at variance. In recent years there have been frequent intimations in the cases that the law which should govern is the law that the parties intend. In the latest case involving the question, the Judicial Committee of the Privy Council has squarely affirmed this view. The plaintiff, who lived in the Island of Jersey, made there a contract of insurance with the resident agent of the Sun Fire Office. The contract contained a stipulation for arbitration in accordance with the English Arbitration Act. Agreements for arbitration are invalid by the law of Jersey. It was held that the English law was the law intended by the parties; and that it therefore governed the validity of the contract. *Spurrier* v. *La Cloche*, [1902] A. C. 446. The decision reflects the present tendency in the English Courts, and in the Supreme Court of the United States. *In re Missouri S. S. Co.*, 42 Ch. D. 321; *Liverpool, etc., Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397. The view, moreover, is current among Continental writers. See GUTHRIE'S SAVIGNY, PRI. INTERNAT. LAW, § 372, note A. Authority, however, up to the present time is not weighty; and it is submitted that the view held is erroneous in theory.

It is a fundamental principle that any act has effect and gives rise to an obligation, only because some law declares that it shall do so; and it is obvious that the only law that can effectively so declare is the law of the place where the act is done. When the parties in the principal case signed their names to a printed document, if any right arose, it was because the law of Jersey said that signing names to such a printed document gave rise to a contract of insurance. By the law of Jersey, however, the stipulation regarding arbitration was void, and therefore did not give rise to any right. Though such a stipulation was valid by the law of England, this particular one could not gain any force from that fact, for the law of England could not act upon it in Jersey. Those who favor the rule that the intention of the parties should govern, argue, however, that when parties contract with reference to the law of England, it is the same as if the law of England were written in as a condition of the contract. This argument is specious, but unsound. It is true that if the law of Jersey did not forbid an agreement for arbitration, and if it was the law of England that in a contract such as that in the principal case arbitration could be had, an express or